IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7279 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK NARROW FABRICS PVT. LTD

Versus

GOVT. OF GUJARAT

Appearance:

MR SHIRISH JOSHI for Petitioner

MR M.A.BUKHARI,AGP FOR RESPONDENTS

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 23/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for a writ of mandamus or any other appropriate writ directing the respondent authorities to extend the benefit of State Cash Subsidy Scheme for Industries (`the Scheme' for short) dated 22nd December, 1977 and extended from time

to time.

The case of the petitioner was that it is a private limited company running its industry at Bulsar. With a view to develop industries, the State of Gujarat had extended several incentives including a scheme in question pursuant to which various companies had established industries and were getting benefits under the scheme. The petitioner also made an application for grant of benefit under the scheme. The application was, however, rejected vide an order dated 21st March, 1986 inter alia stating that the plot which was obtained by the petitioner by transfer from the original allottee who had purchased it in 1976 i.e. before January 1, 1982 and hence, the petitioner would not be entitled to the subsidy.

The petitioner made several representations relying on the fact that various resolutions were issued by the Government from time to time extending the benefits to such units even after 1st January, 1982, but the same was not extended to the petitioner. The petitioner, therefore, was constrained to approach this Court.

Rule was issued on 28th December, 1988 and today, the matter is called out for final hearing.

I have heard Mr. Joshi for the petitioner and Mr Bukhari, AGP for the respondent authorities.

Mr. Joshi contended that there is an error of law committed by the authorities in not extending the benefits of the scheme which was announced by the State Government by way of resolution,dated 22nd December, 1977 initially for five years, which period was extended from time to time. He also submitted that relying on the said scheme, the petitioner established its industry. Thereafter, it was not open to the State Government to deny the benefits . Basing his argument on the doctrine of promissory estoppel, the counsel contended that such action would be clearly arbitrary, unreasonable and violative of Articles 14 and 19 of the Constitution. He also submitted that before rejecting the application and before taking decision that the petitioner was not entitled to the benefits under the scheme, no notice was issued, no opportunity of hearing was afforded and principles of natural justice were not observed . Finally, he contended that an identical question came up for consideration before a learned Single judge of this Court in SCA No.463 of 1986, decided on 12th August, 1991 and in similar circumstances, this Court set aside the

action of the authorities directing them to grant benefits of the resolution and give subsidy to the petitioner unit of that case. He submitted that the petitioner is also similarly stuated and is entitled to the similar relief.

Mr. Bukhari, on the other hand, supported the action taken by the authorities. Relying on the affidavit filed by the Under Secretary, Industries, Mines and Energy Department, Government of Gujarat, Gandhinagar, he submitted that the petitioner was not eligible for cash subsidy under the scheme and the action of the Government cannot be said to be illegal or contrary to law. He also submitted that original allottee had purchased the plot in 1976 and the petitioner purchased it in 1984 and it is, therefore, not entitled to subsidy.

The question for my consideration ,therefore, is whether the petitioner is entitled to subsidy under the scheme or not ? If the scheme was upto November 1, 1982 , the petitioner would not be entitled to benefit under the scheme . The scheme was introduced by the Government in form of a Resolution dated 22nd December, 1977. Clause 6 clearly states that it shall come into effect from 1st November, 1977 and would remain in operation for five years i.e. upto November 1, 1982. But the scheme was extended from time to time which is also clear from the subsequent resolutions dated 15th October, 1982 and 19th August, 1983. In the resolution, dated 19th August, 1983, it was very clearly stated in clause 2 that the scheme was extended upto 1984 and it would apply to industrial units inter alia located in Valsad (Gundlav). The unit of the petitioner is located in the said area.

In similar circumstances, the petitioner of SCA No., 463 of 1986 was granted benefit by learned Single Judge . In that case , though the plot was transferred in the name of the petitioner in April, 1984 , the benefit was granted in view of the fact that the scheme was extended and the petitioner obtained possession before March 31,1984. In the instant case, it was specifically stated in para 13 that the petitioner had obtained possession similar to the petitioner of SCA No. 463 of 1986. In SCA No.463 of 1986, after considering relevant provisions of the scheme as extended from time to time, the learned Single Judge (J.M.Panchal,J.) observed in paras 9 and 10 as under:

"9. I have carefully considered the rival submissions made by the learned counsel for the

respective parties. In Government resolution dated 19th August 1983, it has been clearly laid down that the State Cash Subsidy Scheme announced by the Government vide resolution dated 22nd December 1977, would be made available to new industrial units in the industrial estate of GIDC located at Vapi, Bulsar etc. if such industrial units take possession of the land/ shed before 31st March 1984 and take 4 effective steps specified under Government resolution dated 15th October 1982 before 31st March 1985 and also commenced commercial production before 31st March 1986, each step being completed within the period specified above and all steps being completed before 31st March 1986.

It is an admitted position that the petitioner had taken possession of the plot before 31st March 1984. There is no dispute that the petitioner has taken 4 effective steps as have been specified in Government resolution dated 19th August 1983. The petitioner has been denied the benefit of cash subsidy because of the directives contained in Government resolution dated 16th May 1985. It is not contended on behalf of the respondents that circular dated 16th May 1985 has retrospective effect. In the circumstances respondent No.1 was not justified in denying the benefit of cash subsidy to the petitioner on the ground that the original purchaser\ had not taken the possession of the plot after 1.11.1982. The respondent No.1 in fact had made a promise and representation vide resolution dated 19th August 1983 that those who put up new industrial units and take possession of the land/shed before 31st March 1984 and further take four effective steps specified therein would be entitled to State cash Subsidy scheme . The representation which was made by respondent No.1 was clear, unambiguous and not tentative. In the circumstances, the respondent No.1 cannot be permitted to recile from the promise, assurance and representation. It has been rightly stated by the petitioner that if such representation had not been made, the petitioner would not have established his industrial unit at Vapi or would have taken vacant plot from GIDC Reading the resolution dated 19th August 1983, as a whole,. it is clear that a case in which possession of the plot. shed has been taken on or before 31st March 1984 by way of transfer from other unit is also

covered by the said resolution. In the circumstances, the argument advanced on behalf of respondent No.1 that the petitioner was denied benefit of cash subsidy because the original purchaser had not taken possession of the plot after 1.11.1982 has no substance and it has got to be rejected. It was incumbent upon the respondent to decide the claim of the petitioner for cash subsidy having regard to the resolution then prevailing and the claim of the petitioner could not have been rejected by the respondent No.1 relying upon the resolution dated 16th May 1985, which came into force subsequently and which even according to the respondents, has no retrospective effect.

10. In the result, the order dated 30th September 1982 passed by respondent No.2 a Annexure `E' is quashed and set aside and it is directed that the respondent No.1 shall disburse the amount of State Cash Subsidy scheme available to the petitioner in terms of resolution dated 19th August 1983 which is at Annexure `D'.It is clarified that the petitioner would be entitled to the benefit of the said cash subsidy subject to the conditions laid down by the said resolution and more particularly clause 7 of the said resolution. In the circumstances, the petition is partly allowed. Rule is made absolute accordingly with no order as to costs."

As stated earlier, the case of the petitioner is similar to the petitoner of that SCA inasmuch as the petitioner-unit also obtained possession on 28th March, 1984. Hence, the directions issued by my learned brother J.M.Panchal,J. would equally apply to the case on hand.

Contention of Mr. Bukhari was that since the original allottee had purchased the plot in 1976, the petitioner would not be entitled to benefit under the scheme. The question is- whether the petitioner would be entitled to benefit under the scheme or not. Since the petitioner has purchased the plot on 28th March, 1984, that is during the extended period of the scheme, it would be entitled to the benefits under the scheme.

For the foregoing reasons,he petition deserves to be allowed and is accordingly allowed. The impugned order

dated 21st March, 1986 is quashed and set aside and it is directed that the respondents shall disburse the amount of State Cash Subsidy Sheme to the petitioner in terms of Resolution, dated December 22, 1977 read with Resolution,dated 19th August, 1983 , Annexures `A' and `F' . It is clarified that the petitioner would be entitled to the benefit of the said scheme subject to the conditions laid down in the said resolutions. Rule is made absolute accordingly. No order as to costs.

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parekh